PYC-Davis Graphics, Inc. *and* Local 591, Sign, Pictorial and Display Union, AFL–CIO. Case 7–CA–41442

June 7, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Upon a charge filed by the Union on October 13, 1998, the General Counsel of the National Labor Relations Board issued a complaint on December 16, 1998, against PYC-Davis Graphics, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On December 28, 1998, the Respondent filed an answer to the complaint. On April 14, 1999, however, the Respondent notified the Region in writing that it was withdrawing its answer to the complaint.

On May 3, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On May 5, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

By letter to the Region of April 14, 1999, the Respondent withdrew its answer to the complaint, stating that "Pyc-Davis Graphics, Inc. is permanently out-of-business." Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.[1]

Accordingly, in light of the withdrawal of the Respondent's answer to the complaint, and in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Detroit, Michigan, has been engaged in screen printing for commercial customers. During the calendar year ending December 31, 1997, the Respondent, in conducting its business operations, performed services valued in excess of $50,000 for customers located within the State of Michigan. Each of the customers described above purchased and caused to be transported to its Michigan facilities goods and materials valued in excess of $50,000, which were transported to those facilities directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Local 591, Sign, Pictorial and Display Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, the unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(a) of the Act:

> All full-time and regular part-time production employees engaged in work performed under the classifications set forth in Appendix A of the collective-bargaining agreement, described below, employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, but excluding guards and supervisors, as defined in the Act.[3]

Since about 1968, the Union has been recognized by the Respondent as the exclusive collective-bargaining representative of the employees in the unit. Such recognition has been embodied in successive collective bargaining agreements, the most recent of which is effective by its terms from February 1, 1998, to January 31, 2001. At all times since 1968, based on Section 9(a) of the Act, the union has been the exclusive representative for purposes of collective-bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about October 2, 1998, the Respondent, by its agents, Fodes Sheker and Kelly Davis, terminated its business operations and closed its Detroit facility. The 1998–2001 collective-bargaining agreement provides that employees who sever employment with the Respondent are entitled to prorated vacation pay. Since on or

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

[2] In its letter of April 14, 1999, withdrawing its answer to the complaint, the Respondent asserts that it is "permanently out-of-business." The fact that a respondent may no longer be in business or has terminated its operations does not constitute good cause for failing to file an answer and is not a basis for denying the Motion for Summary Judgment. See, e.g., *Beaumont Glass Co.*, 316 NLRB 35 fn. 1 (1995).

[3] The collective-bargaining agreement referred to in this unit description is the 1998-2001 agreement between the parties.

about October 2, 1998, the Respondent has failed to pay unit employees whose employment has been severed prorated vacation pay in accordance with the 1998–2001 collective-bargaining agreement. The Respondent engaged in this conduct without prior notification to the Union and without affording the Union an opportunity to bargain with the Respondent over the effects of such conduct, and without the consent of the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) of the Act, and Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to bargain with the Union concerning the effects on the unit employees of the termination of business operations at its Detroit, Michigan facility, we shall order the Respondent, on request, to bargain with the Union concerning the effects of its decision to cease operations. As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close its Detroit, Michigan facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;[4] and (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent unlawfully failed to pay prorated vacation pay to its severed unit employees, we shall order the Respondent to pay the unit employees pro-rated vacation pay in accordance with the 1998–2001 collective-bargaining agreement, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, PYC-Davis Graphics, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 591, Sign, Pictorial and Display Union, AFL–CIO, which is the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, over the effects of its decision to close its Detroit, Michigan facility. The appropriate unit consists of:

> All full-time and regular part-time production employees engaged in work performed under the classifications set forth in Appendix A of the 1998–2001 collec-

[4] *Melody Toyota*, 325 NLRB No. 158 (May 29, 1998).

tive-bargaining agreement, employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, but excluding guards and supervisors, as defined in the Act.

(b) Failing to pay unit employees whose employment has been severed prorated vacation pay in accordance with the 1998–2001 collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of the termination of the Respondent's business operations at its Detroit, Michigan facility, and the termination of the unit employees.

(b) Pay its former employees in the unit described above their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from October 2, 1998, the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy portion of this decision.

(c) Pay unit employees whose employment has been severed prorated vacation pay in accordance with the 1998–2001 collective-bargaining agreement, with interest, as set forth in the remedy portion of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[5] to the Union and to all current and former unit employees.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 7, 1999

John C. Truesdale, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

This notice has been mailed to the Union and to All Employees who were employed by PYC-Davis Graphics, Inc., in the production employees unit at the time the Detroit, Michigan facility closed.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 591, Sign, Pictorial and Display Union, AFL–CIO, which is the designated exclusive bargaining representative of our employees in an appropriate unit, over the effects of our decision to close our Detroit, Michigan facility. The appropriate unit consists of:

> All full-time and regular part-time production employees engaged in work performed under the classifications set forth in Appendix A of the 1998–2001 collective-bargaining, agreement, employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, but excluding guards and supervisors, as defined in the Act.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail to pay unit employees whose employment has been severed prorated vacation pay in accordance with the 1998–2001 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on the unit employees of the termination of our business operations at our Detroit, Michigan facility, and the termination of our unit employees.

WE WILL pay our former employees in the unit described above who were employed at the time of our closing their normal wages for the period of time set forth in the decision underlying this notice to employees, with interest.

WE WILL pay unit employees whose employment has been severed prorated vacation pay in accordance with the 1998–2001 collective-bargaining agreement, with interest.

PYC-DAVIS GRAPHIC, INC.